

(1925) 05 CAL CK 0043
In the Calcutta High Court

Nagendranath Addy and Another

APPELLANT

Vs

Commissioner of the Presidency Division and Others

RESPONDENT

Date of Decision : 27-05-1925

Acts Referred:

Citation : AIR 1926 Cal 1016

Judgement

1. These two appeals arise out of two suits brought by certain persons who claim that they are the duly elected Municipal Commissioners for the Berhampore and Khagra wards of the Berhampore Municipality. In one suit the plaintiffs claim to have been legally elected to represent the Berhampore ward and in the other suit the plaintiffs made a similar claim in respect of the Khagra ward.

2. It appears that the elections took place on the 3rd September 1924. There were 11 candidates standing for the five vacancies in the Berhampore ward and 14 candidates for the four vacancies in the Khagra ward. After the polling commenced four candidates from the Khagra ward withdrew during the hours within which voters were admitted into the polling station. The time at which the doors were closed against every voter entering into the place for voting was 6 o'clock; and under Rule 17-A the polling had to go on until all the voters in the polling station had recorded their votes. Shortly after 6 o'clock, apparently by some arrangement amongst the candidates, 6 out of the 11 Candidates of the Berhampore Ward withdrew their candidature leaving 6 only, whom the polling officer then declared to be duly elected. Similarly in the Khagra election 6 candidates withdrew after 6 o'clock and this left, as 4 had withdrawn previously, only 4 candidates who were also declared to be duly elected. Certain rate-payers approached the District Magistrate on the ground that these withdrawals were illegal. The District Magistrate held that they were illegal and in consequence the Commissioner of the Division has ordered a fresh election in respect of the two wards.

3. The present suits were then brought against the Magistrate and Commissioner and the petitioners before the Magistrate, and have been decided against the

plaintiffs in both the lower Courts.

4. In the appeals before us there is no dispute with regard to the facts and it is now clear that all the withdrawals took place before the poll was finally closed, though the majority of the withdrawals was made after the doors of the polling stations were closed against new voters coming in. The only question, therefore, before us is whether there is anything in the rules to prevent a candidate withdrawing after the voting has commenced and before it is concluded. Now, it had to be admitted that the rules are silent on this point.

5. The rules framed by the Local Government under the Bengal Municipal Act (as amended up to date for this Municipality) provide that if the number of candidates is not greater than the number of vacancies all the candidates shall be deemed to be elected. Rule 21(2) lays down generally that the name of any candidate who may have withdrawn his candidature shall be removed by the polling officer on receipt of information of withdrawal in writing. We understand these candidates all withdrew in writing. Thus there is nothing in these rules which at all fixes the time within which withdrawal before the closing of the polls will be allowed and after which it will be forbidden. The District Judge's point appears to have been that in the rules which the Government has recently made for elections for the Howrah Municipality under this Act, provision is made permitting withdrawal only up to a certain time; and reading these new rules with other election rules-he thinks that the Howrah rule must be of universal application among the Municipalities of Bengal. His argument appears to be that as in the rules relating to Howrah there is such an arrangement and as in the rules for election to the Imperial Legislative Assembly and Provincial Legislative Councils (both sets of rules being of very recent date) there are similar restrictions on withdrawal, a general principle forbidding anyone to withdraw after the polling has commenced should be implied in these old local Municipal Election Rules (made in 1896) also. This argument appears to us to be fallacious. The fact that in recent years the Howrah Municipality has found it necessary to have its rules amended to prevent withdrawals after a certain time but that the ordinary rules which apply to the Berhampore Municipality continue as before, seems to us to be an equally good argument that the framers of the Howrah amendments thought the time for withdrawal under the old rules lasted right up to the time of the closing of the poll. We are not, however, concerned with what modern draftsmen have thought about the old rules. It is our duty to interpret the existing rule as it applies to this and other mofussil Municipalities in Bengal (excluding Howrah), and the fact that recent drafting has limited the right to withdraw is no argument, one way or another, as to the interpretation of the Rules of 1896. We must, therefore, decide the case on the rules of 1896 and no other.

6. In this connexion we are fortified in the order which we consider is the only possible one by the decision of the Chief Justice, Allahabad High Court in the case of *Sultan Baksh v. Abdul Hamid* AIR 1921 Alt. 134 where exactly the same

state of affairs arose. The suggestion of the learned Government Pleader, that a dispute between two persons for election is not the same as one where several dispute, does not appeal to us. There were two candidates for two vacancies and during the course of the day one candidate withdrew. The High Court held interpreting the rules under which Municipal elections in that Province are held that a candidate for election could withdraw his candidature at any time before the election was concluded. The rules in force in the Province of Agra are not word for word the same as the rules obtaining in Bengal, but their purport is the same and in both there is no provision dealing with the time up to which withdrawals are valid. We must hold in the absence of any restriction in the Bengal Rules as to the time of withdrawal that candidates are, under the existing rules, entitled to withdraw at any time before the closing of the poll; and as it is admitted that the polling had not closed when these candidates withdrew, their withdrawal was lawful and the remaining candidates thereby were in consequence duly elected.

7. The appeals must, therefore, be allowed; but in the circumstances of the cases, and as the appellants do not press for them, we make no order as to costs.